

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT OF)
INSURANCE, FINANCIAL INSTITUTIONS)
AND PROFESSIONAL REGISTRATION,)
)
Petitioner,)
)
vs.)
)
NADER MUSA,)
)
Respondent.)

No. 13-1774 DI

ORDER

We grant the motion for partial summary decision filed by the Director of the Department of Insurance, Financial Institutions and Professional Registration (“the Director” and “the Missouri Department”). Nader Musa is subject to discipline because he pled guilty to criminal offenses that were felonies and crimes of moral turpitude. He is subject to discipline because he was disciplined in another state and he did not inform the Director within the time required by statute. He is not subject to discipline for practicing as an insurance producer without a license to do so.

Procedure

On October 9, 2013, the Director filed a complaint seeking to discipline Musa. On October 21, 2013, we served Musa with a copy of the complaint and our notice of

complaint/notice of hearing by certified mail. Musa did not file an answer. On February 24, 2014, the Director filed a motion for partial summary decision, and on March 6, 2014, filed a supplement to the record. Regulation 1 CSR 15-3.446(6) provides that we may decide issues without a hearing if the Director establishes facts that Musa does not dispute and entitle the Director to a favorable decision.

The Director cites the request for admissions that was served on Musa on November 25, 2013. Musa did not respond to the request. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.¹ Such a deemed admission can establish any fact or any application of law to fact.² That rule applies to all parties, including those acting *pro se*.³ Section 536.073⁴ and 1 CSR 15-3.420(1) apply that rule to this case.

We gave Musa until March 10, 2014, to respond to the motion, but he did not respond. Therefore, the following facts as established by the Director are undisputed.

Findings of Fact

1. The Missouri Department issued Musa an insurance producer license on July 13, 2001. Musa's Missouri license expired on July 13, 2009, and Musa did not apply for renewal. Musa has not been a licensed producer in Missouri since July 2009.

Licensing Discipline in Another State

2. Musa was a licensed insurance producer in Illinois.

¹ *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

² *Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

³ *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

⁴ RSMo 2000. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

3. On September 3, 2003, Musa executed a Stipulation and Consent Order (“2003 Stipulation”) with the Illinois Department of Insurance (“Illinois Department”), in which Musa agreed to the following facts and violations of Illinois insurance laws and regulations:

A. . . . The Licensee misappropriated monies required to be held in a fiduciary capacity in violation of Section 500-115 of the Illinois Insurance Code (215 ILCS 5/500-115).

B. The Licensee failed to maintain a cash receipts register of all monies received, nor could one be created with the minimum detail required in violation of 50 Ill. Adm. Code 3113.50(d).

C. Sixteen (16) commission withdrawals were sampled during the course of the examination and with regard to those commission withdrawals by the Licensee, sixteen (16) were not matched and identified with a prior corresponding premium deposit in the Premium Fund Trust Account (PFTA) as required by 50 Ill. Adm. Code 3113.40(h)(3) and 50 Ill. Adm. Code 3113.50(e)(7), nor was any additional supporting documentation included for those commission withdrawals as required by 3113.50(e)(6).

D. For the period January 15, 2001 through September 27, 2002, ninety-one (91) disbursements were noted from the Licensee’s PFTA which could be considered non-premium withdrawals. None of those non-premium withdrawals could be properly matched and identified with the prior corresponding non-premium deposits as required by 50 Ill. Adm. Code 3113.40(h)(4) and 50 Ill. Adm. Code 3113.50(e)(8). Additionally, of the ninety-one (91) disbursements, six (6) represented general operating account disbursements in violation of 50 Ill Adm. Code 3113.40(i). Furthermore, eighty-five (85) disbursements were written from the Licensee’s PFTA to an unlicensed business entity in violation of 50 Ill. Adm. Code 3113.40(h)(6).

E. The Licensee failed to maintain monthly financial institution account reconciliations for the PFTA as required by 50 Ill Adm. Code 3113.50(g).

F. The Licensee negotiated money from a consumer and failed to forward an application to an insurer for long-term care coverage. The Licensee held the premium money for a period of six (6) months. The Licensee returned the premium money after the insured filed a complaint. By these actions, the Licensee failed to promptly complete an insurance transaction thereby demonstrating incompetence and financial irresponsibility in the course of doing

business, which are grounds for revocation pursuant to Section 500-70 (a)(8) of the Illinois Insurance Code (215 ILCS 5/500-70(a)(8)).

G. The Licensee offered a rebate to a consumer in violation of Section 151 of the Illinois Insurance Code (215 ILCS 5/151).

H. By using letterhead of an unlicensed business entity, the Licensee conducted business under a name other than his own and failed to notify the Director before using the assumed name in violation of Section 500-55 of the Illinois Insurance Code (215 ILCS 5/500-55).^{5]}

4. Pursuant to the 2003 Stipulation, Musa agreed to pay a civil forfeiture of \$6,000 and to modify his business practices to comply with Illinois insurance laws and regulations.

5. The administrative action taken against Musa by the Illinois Department became final on September 3, 2003.

6. Musa did not report the administrative action taken against him by the Illinois Department to the Missouri Department within thirty days of the final disposition of the matter.

7. On September 9, 2010, Musa signed an order of voluntary revocation with the Illinois Department.

8. On November 18, 2010, the Illinois Department issued an Order of Voluntary Revocation (“Illinois Order”) revoking Musa’s insurance producer’s license.

Practicing Without a License

9. In November 2009, National States Insurance Company in Liquidation (“National States”) terminated Musa’s appointments with it. Musa was no longer appointed to sell or do the business of insurance for or on behalf of National States.

10. In December 2011, when he was not licensed in Missouri or Illinois, Musa called his former clients, Missouri residents Wesley and Dixie Eichelmann (collectively “the

⁵ Supplement to the Record, Ex. 3.

Eichelmanns”), told them he was a licensed agent for National States, and convinced them to pay him over \$9,000 for what he described as premium increases in their insurance rate.

11. On June 18, 2012, the Missouri Department received a Consumer Complaint Report (“Complaint”) from the Eichelmanns against Musa. The Eichelmanns alleged the following:

In Dec. 2011, Mr. Musa called us requesting that we pay our 2012 premium for year 2012 in advance, that he could save us a premium increase. We mailed a check (#8376) in the amount of \$2024.88, sent to his home address. On May 10, 2012, after being contacted several times by Mr. Musa, also being told there was an 18% increase, we sent checks #1458 and #1457 to him in the amounts of \$3115.16 and \$4049.82 to pay up until 3/2015. Since we had had Mr. Musa as agent for National States Ins. Co. we had no knowledge that he was no longer a representative for them. We had received no notification that we no longer had an agent. In May, 2012 we received a call from Andrew Leach of St. Clair Co., Il., regarding [sic] investigation, that our checks were in a frozen acct. in Regions Bank. We are requesting return of these checks.[⁶]

Criminal Offenses

12. On April 27, 2012, in the Circuit Court of St. Clair County, Illinois (“the Circuit Court”), two criminal indictments were filed against Musa alleging theft by deception, a Class 2 felony:

COUNT 1 of 2 : The GRAND JURY of St. Clair County, Illinois in the name and by the authority of the People of the State of Illinois, charges that NADER MUSA from between the 13th day of September, 2011 and the 22nd day of September, 2011 in the County of St. Clair, in the State of Illinois, committed the offense of THEFT BY DECEPTION, in violation of Section 16-1(a)(2)(A), Act 5.0, Chapter 720, Illinois Compiled Statutes 2006, in that NADER MUSA, knowingly obtained, by deception, control over property of Edna Nienhaus, being \$5,620.69 United States currency, having a total value in excess of \$500.00 intending to deprive the owner, permanently of the use and benefit of the property, in that he, while portraying himself as a licensed insurance salesman, induced Edna Neinhaus to write a personal check made payable to him, indicating to Edna Nienhaus that the

⁶ Motion Ex. 4A.

money would be used for her insurance premiums, when in fact was not used as such. . . .

COUNT 2 of 2 : The GRAND JURY of St. Clair County, Illinois in the name and by the authority of the People of the State of Illinois, charges that NADER MUSA from between the 13th day of September, 2011 and the 22nd day of September, 2011 in the County of St. Clair, in the State of Illinois, committed the offense of THEFT BY DECEPTION, in violation of Section 16-1(a)(2)(A), Act 5.0, Chapter 720, Illinois Compiled Statutes 2006, in that NADER MUSA, knowingly obtained, by deception, control over property of Virginia Hankammer, being \$3,850.88 United States currency, having a total value in excess of \$500.00 intending to deprive the owner, permanently of the use and benefit of the property, in that he, while portraying himself as a licensed insurance salesman, induced Virginia Hankammer to write a personal check made payable to him, indicating to Virginia Hankammer that the money would be used for her insurance premiums, when in fact was not used as such[.⁷]

13. At the time Musa was charged with the crimes, Edna Neinhaus, the victim in the first count of theft by deception charged against Musa, was 83 years old, and Virginia Hankammer, the victim in the second count of theft by deception charged against Musa, was 88 years old.

14. On July 16, 2012, in the Circuit Court, a criminal information was filed against Musa alleging unlawful solicitation of insurance, a Class 4 felony:

COUNT 1 of 1: BRENDAN F. Kelly of St. Clair County, Illinois in the name and by the authority of the people of the State of Illinois charges that NADER MUSA from between the 14th of May, 2012 and the 15th of May, 2012, in the County of St. Clair, in the State of Illinois NADER MUSA committed the offense of UNLAWFUL SOLICITATION OF INSURANCE, in violation of Section 500-15(a), Act 5.0, Chapter 215, ILCS, 2006, in that NADER MUSA, knowingly and without authority, solicited assisted living/nursing home and home health care insurance for Wesley and Dixie Eichelmann, without a license to solicit insurance, and in doing so misappropriated moneys collected from Wesley and Dixie Eichelmann through such solicitation.[⁸]

⁷ Motion Ex. 6.

⁸ *Id.*

15. Wesley and Dixie Eichelmann were 66 and 75 years old, respectively, at the time Musa was charged with the unlawful solicitation of insurance.

16. Musa committed the conduct as alleged in the indictment and information.

17. On July 16, 2013, Musa pled guilty to both counts of the Class 2 felony of theft by deception, in violation of Section 16-1(a)(2)(A), Act 5.0, Chapter 720, ILCS, 2006, and one count of the Class 4 felony of unlawful solicitation of insurance, in violation of Section 500-15(a), Act 5.0, Chapter 215, ILCS, 2006.

18. The Circuit Court sentenced Musa to twelve months' probation on each count, to run consecutively, electronic monitoring for the first six months, and ordered him to pay restitution in the total amount of \$9,260.82, plus various court costs and fees.

Conclusions of Law

We have jurisdiction over this case.⁹ The Director has the burden of proving by a preponderance of the credible evidence that Musa has committed an act for which the law allows discipline.¹⁰ Musa admitted facts and that those facts authorize discipline. But statutes and case law instruct us that we must “separately and independently” determine whether such facts constitute cause for discipline.¹¹ Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

Section 375.141 provides:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

⁹ Section 621.045.

¹⁰ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

¹¹ *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

* * *

(6) Having been convicted of a felony or crime of moral turpitude;

* * *

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

* **

(12) Knowingly acting as an insurance producer when not licensed or accepting insurance business from an individual knowing that person is not licensed[.]

* * *

4. The director may also revoke or suspend pursuant to subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.

Musa is not currently licensed, but § 375.141.4 authorizes discipline because he had a Missouri license and failed to renew it. The Director asks us to find cause for discipline under Counts I through III, V, and VII as set forth in his complaint. The Director did not withdraw the other Counts, which alleged cause for discipline under § 375.141.1(2), (4), and (8), but did include them in the motion for summary decision.

Count I

The Director argues that Musa pled guilty to and was convicted of three felonies and that this is cause for discipline under § 375.141.1(6). We agree. Musa is subject to discipline under § 375.141.1(6).

Count II

The Director argues that Musa pled guilty to and was convicted of three crimes of moral turpitude, and that this is cause for discipline under § 375.141.1(6). Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”^{12]}

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,¹³ a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:¹⁴

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

¹² *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

¹³ 213 S.W.3d 720 (Mo. App., W.D. 2007).

¹⁴ *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.¹⁵ We find that these are Category 1 crimes. In this case, even if we found the crimes to be Category 3 crimes, the circumstances – stealing from elderly former clients under the guise of a trusted agent and misrepresenting his agency status with National – make these crimes of moral turpitude.

There is cause for discipline under § 375.141.1(6).

Count III

The Director argues that Musa’s insurance producer license was revoked in Illinois, and that this is cause for discipline under § 375.141.1(9). We agree. There is cause for discipline under § 375.141.1(9).

Count V

The Director argues that Musa failed to report that his insurance producer license was revoked in Illinois as required by § 375.141.6, and that this is cause for discipline under § 375.141.1(2). Section 375.141.6 states:

An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

While the Director made no allegation that Musa failed to report the 2010 revocation, he alleges and Musa admits that he failed to notify the Director of the 2003 stipulation within the required time period.

There is cause for discipline under § 375.141.1(2) for violating § 375.141.6.

¹⁵ *Brehe*, 213 S.W.3d at 725.

Count VII

The Director argues that Musa acted as an insurance producer without a license, and that this is cause for discipline under § 375.141.1(12). Musa admitted that he contacted the Eichelmanns in Missouri and represented that he was a licensed insurance producer and the Eichelmanns' insurance premiums had increased. But he was not collecting money from them for any premiums. An insurance producer is "a person required to be licensed pursuant to the laws of this state to sell, solicit or negotiate insurance[.]"¹⁶ Musa was not selling or negotiating insurance. He was using his former profession to steal money from his former clients, but he was not practicing that profession.

There is no cause for discipline under § 375.141.1(12).

Summary

There is cause for discipline under § 375.141.1(2), (6), and (9). There is no cause for discipline under § 375.141.1(12). We grant the motion for partial summary decision as to § 375.141.1(2), (6), and (9). The Director shall inform us by April 7, 2014, whether he will proceed with the remaining counts at the hearing scheduled for April 10, 2014.

SO ORDERED on April 3, 2014.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹⁶ Section 375.012.2(6).